

ANTI-HOAX TERRORISM ACT OF 2003

MAY 20, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 1678]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1678) to amend title 18, United States Code, with respect to false communications about certain criminal violations, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
The Amendment	1
Purpose and Summary	3
Background and Need for the Legislation	3
Hearings	4
Committee Consideration	4
Vote of the Committee	5
Committee Oversight Findings	5
New Budget Authority and Tax Expenditures	5
Congressional Budget Office Cost Estimate	5
Performance Goals and Objectives	6
Constitutional Authority Statement	6
Section-by-Section Analysis and Discussion	6
Changes in Existing Law Made by the Bill, as Reported	8
Markup Transcript	11

THE AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Stop Terrorist and Military Hoaxes Act of 2004”.

SEC. 2. HOAXES AND RECOVERY COSTS.

(a) **PROHIBITION ON HOAXES.**—Chapter 47 of title 18, United States Code, is amended by inserting after section 1037 the following:

“§ 1038. False information and hoaxes

“(a) **CRIMINAL VIOLATION.**—

“(1) **IN GENERAL.**—Whoever knowingly engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505 (b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49 shall—

“(A) be fined under this title or imprisoned not more than 5 years, or both;

“(B) if serious bodily injury (as defined in section 1365 of this title, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title) results, be fined under this title or imprisoned not more than 25 years, or both; and

“(C) if death results, be fined under this title or imprisoned for any number of years up to life, or both.

“(2) **ARMED FORCES.**—Whoever, without lawful authority, makes a false statement, with intent to convey false or misleading information, about the death, injury, capture, or disappearance of a member of the Armed Forces of the United States during a war or armed conflict in which the United States is engaged, shall—

“(A) be fined under this title or imprisoned not more than 5 years, or both;

“(B) if serious bodily injury (as defined in section 1365 of this title, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title) results, be fined under this title or imprisoned not more than 25 years, or both; and

“(C) if death results, be fined under this title or imprisoned for any number of years up to life, or both.

“(b) **CIVIL ACTION.**—Whoever knowingly engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505 (b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49 is liable in a civil action to any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

“(c) **REIMBURSEMENT.**—

“(1) **IN GENERAL.**—The court, in imposing a sentence on a defendant who has been convicted of an offense under subsection (a), shall order the defendant to reimburse any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

“(2) **LIABILITY.**—A person ordered to make reimbursement under this subsection shall be jointly and severally liable for such expenses with each other person, if any, who is ordered to make reimbursement under this subsection for the same expenses.

“(3) **CIVIL JUDGMENT.**—An order of reimbursement under this subsection shall, for the purposes of enforcement, be treated as a civil judgment.

“(d) **ACTIVITIES OF LAW ENFORCEMENT.**—This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or political subdivision of a State, or of an intelligence agency of the United States.”.

(b) CLERICAL AMENDMENT.—The table of sections as the beginning of chapter 47 of title 18, United States Code, is amended by adding after the item for section 1037 the following:

“1038. False information and hoaxes.”.

SEC. 3. OBSTRUCTION OF JUSTICE AND FALSE STATEMENTS IN TERRORISM CASES.

(a) ENHANCED PENALTY.—Section 1001(a) and the third undesignated paragraph of section 1505 of title 18, United States Code, are amended by striking “be fined under this title or imprisoned not more than 5 years, or both” and inserting “be fined under this title, imprisoned not more than 5 years or, if the matter relates to international or domestic terrorism (as defined in section 2331), imprisoned not more than 10 years, or both”.

(b) SENTENCING GUIDELINES.—Not later than 30 days of the enactment of this section, the United States Sentencing Commission shall amend the Sentencing Guidelines to provide for an increased offense level for an offense under sections 1001(a) and 1505 of title 18, United States Code, if the offense involves a matter relating to international or domestic terrorism, as defined in section 2331 of such title.

SEC. 4. CLARIFICATION OF DEFINITION.

Section 1958 of title 18, United States Code, is amended—

- (1) in subsection (a), by striking “facility in” and inserting “facility of”; and
- (2) in subsection (b)(2), by inserting “or foreign” after “interstate”.

PURPOSE AND SUMMARY

H.R. 1678, the “Anti-Hoax Terrorism Act of 2003,” creates criminal and civil penalties for whoever knowingly engages in any conduct, with intent to convey false or misleading information, under circumstances where such information may reasonably be believed and where such information concerns an activity which would constitute a violation of such crimes as those relating to explosives; firearms; destruction of vessels; terrorism; sabotage of nuclear facilities; aircraft piracy; a dangerous weapon to assault flight crew members and attendants; explosives on an aircraft; homicide or attempted homicide or damaging or destroying facilities. The bill also prohibits making a false statement with intent to convey false or misleading information about the death, injury, capture, or disappearance of a member of the U.S. Armed Forces during a war or armed conflict in which the United States is engaged. Additionally, the bill increases penalties from not more than 5 years to not more than 10 years for making false statements, and obstructing justice, if the subject matter relates to international or domestic terrorism.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 1678, the “Anti-Hoax Terrorism Act of 2003,” was introduced on April 8, 2003. The bill expands H.R. 3209, the “Anti-Hoax Terrorism Act of 2001,” which passed the House in the 107th Congress on December 12, 2001, by a recorded vote (rollcall no. 491) of 423 yeas to 0 nays. No further action was taken on the bill during the 107th Congress.

Because of the tragic September 11, 2001 attacks and the October, 2001 anthrax attacks, the public remains alarmed and is appropriately reporting suspicious activity. After the anthrax attacks in the fall of 2001, H.R. 3209, the “Anti-Hoax Terrorism Act of 2001,” was introduced to address a growing phenomena of hoaxes that further terrorized the American public into falsely thinking biological attacks had occurred.

The Department of Justice and the Federal Bureau of Investigation testified on November 7, 2001, on H.R. 3209, before the Subcommittee on Crime, and made it clear that these types of hoaxes threaten the health and safety of the American public and the national security of the nation. Such a hoax is designed to instill fear in the public or its target and are a serious threat to the public's safety on many levels. First, such a hoax distracts law enforcement and military personnel from actual threats or actual emergencies and, in effect, assists terrorists. Second, these hoaxes often cause buildings and businesses to be evacuated and closed imposing costs on the economy and potentially endangering health. If a hoax causes a hospital to be evacuated, for instance, people could die.

Three years later, the War on Terrorism continues and unfortunately so do the hoaxes. In addition to the hoaxes of terrorist attacks, families of U.S. soldiers fighting in Iraq became the target of hoaxes as well. While U.S. soldiers fought to liberate the Iraqi people and protect our country from a dictator who funded terrorists' activities, people telephoned the families of American servicemen and women with false reports that their loved ones had been killed or captured. These hoaxes caused severe and unimaginable emotional strain on families already worried about the safety of their family members. On April 1, 2003, the Associated Press reported that a "prank caller devastated the Flagstaff family of a 22-year-old soldier serving in Iraq, falsely telling them that the man was dead." The witness produced a moving letter from his nephew claiming that a soldier had been killed in the process of delivering a satellite phone to his nephew to call home and tell his family he was alive and well.

Neither the terrorism hoaxes nor the war time hoaxes are adequately covered by current Federal law. Consequently, some courts have found that certain terrorism hoaxes are false reports that cannot be prosecuted as threats. On January 17, 2003, for instance, a court dismissed an anthrax hoax case because the court found that the statute under which the defendant was charged did not fit. That statute prohibited threats of use of weapons of mass destruction. These hoaxes threaten the public's safety and health, further diminish the already overburdened resources of law enforcement and emergency responders, distract our military, and harm the nation's morale and economy.

HEARINGS

The Committee's Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on H.R. 1678 on July 10, 2003. Testimony was received from four witnesses: Representative Thaddeus McCotter of the U.S. House of Representatives, 11th District of Michigan; Ms. Susan Brooks, U.S. Attorney for the Southern District of Indiana, U.S. Department of Justice; Superintendent James McMahon, of the New York State Police; and Mr. Danny Hogg, target of war-time hoax and family member of a U.S. soldier.

COMMITTEE CONSIDERATION

On March 30, 2004, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered favorably reported the bill, H.R.1678, as amended, by a voice vote, a quorum

being present. On May 13, 2004, the full Committee on the Judiciary met in open session and ordered favorably reported the bill, H.R. 1678, with an amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the Committee's consideration of H.R. 1678.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1678, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 17, 2004.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1678, the "Stop Terrorist and Military Hoaxes Act of 2004."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 1678—Stop Terrorist and Military Hoaxes Act of 2004.

CBO estimates that implementing H.R. 1678 would have no significant cost to the Federal Government. Enacting H.R. 1678 could affect direct spending and receipts, but CBO estimates that any impact on direct spending and receipts would not be significant. H.R.

1678 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

H.R. 1678 would establish new Federal crimes for the perpetration of hoaxes involving weapons of mass destruction and similar threats, and for the communication of false information about U.S. forces involved in armed conflict. Offenders would be subject to imprisonment, as well as criminal and civil fines.

Under the provisions of H.R. 1678, the government would be able to pursue cases involving hoaxes that it otherwise would not be able to prosecute. Because there are similar prohibitions on hoaxes in current law, however, CBO expects that the bill's provisions would probably affect a small number of additional cases. Thus, any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 1678 could be subject to fines, the Federal Government might collect additional fines if the legislation is enacted. Collections of civil fines are recorded in the budget as revenues. Criminal fines are deposited as receipts in the Crime Victims Fund and later spent. CBO expects that any additional revenues and direct spending would be negligible because of the small number of cases involved.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1678 is intended to impose civil and criminal penalties to deter and punish a person or persons for perpetrating a hoax that others could reasonably believe under the circumstance is or may be a terrorist-type attack or that the death, injury, capture, or disappearance of a member of the U.S. Armed Forces has occurred during a war or armed conflict in which the United States is engaged. Such hoaxes diminish the resources of Federal law enforcement and the military and divert Federal investigators and soldiers attention away from actual threats. This legislation is intended to prevent such a drain and aberration of Federal resources that threaten the citizens and the national security of the United States.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

This section by section describes the bill as reported unless otherwise indicated.

Sec. 1. Short Title.

Under this section, the new short title is the “Stop Terrorists and Military Hoax Act of 2004.” The change reflects the additional language to prohibit hoaxes against military families.

Sec. 2. Hoaxes and Recovery Costs.

As in the original bill, the bill as reported contains a criminal violation section, a civil action section, and a reimbursement section. The new language in the bill as reported also adds a section to cover hoaxes against the military.

Under current law, it is a felony to perpetrate a hoax, such as falsely claiming there is a bomb on an airplane. It is also a felony to communicate, in interstate commerce, threats of personal injury to another. A gap exists, however, in the current law because it does not address a hoax related to biological, chemical, or nuclear dangers where there is no specific threat. This section creates new section 1037 of title 18, entitled false information and hoaxes.

New section 1038(a) of title 18 covers hoaxes of criminal violations and has been changed to reflect additional hoaxes. The original bill stated that persons engaging in any conduct, with intent to convey false or misleading information, under circumstances where the conveyed information may reasonably be believed and where such information concerns an activity which would constitute a violation of title 18 U.S.C. §§175 (relating to biological weapons attacks), 229 (relating to chemical weapons attacks), 831 (nuclear attacks) or 2332a (weapons of mass destruction attacks).

The section now covers violations in title 18 of Chapters 2 (relating to aircraft and motor vehicles); 10 (relating to biological weapons attacks); Chapter 11B (relating to chemical weapons); Chapter 39 (relating to explosives and other dangerous articles); Chapter 40 (relating to importing and distributing explosive materials); Chapter 44 (relating to firearms); Chapter 111 (relating to shipping such as destruction of vessels); and Chapter 113B (relating to terrorism). The section also covers violations of title 42 U.S.C. §2284 (§236 of the Atomic Energy Act of 1954)(relating to sabotage of nuclear facilities). Additionally, the bill covers violations of 49 U.S.C. §46502 (relating to aircraft piracy); the second sentence of §46504 (relating to the use of a dangerous weapon to assault flight crew members and attendants); §46505(b)(3) (relating to placing an explosive on an aircraft); §46506 (relating to homicide or attempted homicide) or §60123(b) (relating to damaging or destroying facilities).

New §1038(b) of title 18 covers hoaxes against members of the Armed Forces and their families. This section incorporates H.R. 3314, a bill to provide criminal penalties for false information about the status of a member of the Armed Forces engaged in armed conflict, and was introduced by Representative McCotter. This section prohibits making a false statement with intent to convey false or misleading information about the death, injury, capture, or disappearance of a member of the U.S. armed forces during a war or armed conflict in which the United States is engaged. This was added after several reports and testimony highlighted that families of U.S. soldiers fighting in Iraq have become the target of hoaxes claiming the soldiers had been killed or terribly wounded.

The civil penalties and reimbursement sections of the bill have been changed to reflect the new language in the criminal violation section.

The Committee encourages the U.S. Sentencing Commission to provide for sentencing ranges which reflect an increased offense level for those offenders who violate this new section under circumstances in which the offender knew, or reasonably should have

known, that pecuniary harm or bodily injury would result from the offense.

Sec. 3. Obstruction of Justice and False Statements in Terrorism Cases.

This is a new section incorporating H.R. 3086, the “Obstruction of Justice and False Statements in Terrorism Cases Act of 2003,” introduced by Representative Mark Green. This section amends §§ 1001(a) and 1505 of title 18, to increase penalties from not more than 5 years to not more than 10 years for making false statements and obstructing justice, if the subject matter relates to international or domestic terrorism and directs the United States Sentencing Commission to amend the Sentencing Guidelines to provide an offense level increase of at least 18 for such offenses.

This section is to cover an individual who purposefully impedes or hinders an investigation of domestic or international terrorism. The Committee believes that even 1 minute wasted to ascertain the offender could lead to immense harm. Every minute is critical in an investigation, and intentionally sending investigators on the wrong path or deliberately slowing down an investigation by refusing to assist law enforcement could cost lives. The increase in penalty reflects that this is a severe crime and should be adequately punished.

Sec. 4. Clarification of Definition.

This is a new section incorporating H.R. 3046, the “Terrorism Transcending National Boundaries Correction Act of 2003,” introduced by Mr. Gallegly. This section incorporates a technical corrections bill that would correct an erroneous definition in 18 U.S.C. § 1958(b)(2) which proscribes murder for hire in interstate or foreign commerce, but only defines “facilities of interstate commerce,” omitting “foreign commerce.” This section would insert “or foreign” and the law would correctly read as “facility of interstate or foreign commerce” for the definition.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 47—FRAUD AND FALSE STATEMENTS

Sec.
1001. Statements or entries generally.

* * * * *

1038. *False information and hoaxes.*

§ 1001. Statements or entries generally

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

(1) * * *

* * * * *

shall [be fined under this title or imprisoned not more than 5 years, or both] *be fined under this title, imprisoned not more than 5 years or, if the matter relates to international or domestic terrorism (as defined in section 2331), imprisoned not more than 10 years, or both.*

* * * * *

§ 1038. False information and hoaxes

(a) CRIMINAL VIOLATION.—

(1) *IN GENERAL.*—Whoever knowingly engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505 (b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49 shall—

(A) *be fined under this title or imprisoned not more than 5 years, or both;*

(B) *if serious bodily injury (as defined in section 1365 of this title, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title) results, be fined under this title or imprisoned not more than 25 years, or both; and*

(C) *if death results, be fined under this title or imprisoned for any number of years up to life, or both.*

(2) *ARMED FORCES.*—Whoever, without lawful authority, makes a false statement, with intent to convey false or misleading information, about the death, injury, capture, or disappearance of a member of the Armed Forces of the United States during a war or armed conflict in which the United States is engaged, shall—

(A) *be fined under this title or imprisoned not more than 5 years, or both;*

(B) *if serious bodily injury (as defined in section 1365 of this title, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title) results, be fined under this title or imprisoned not more than 25 years, or both; and*

(C) *if death results, be fined under this title or imprisoned for any number of years up to life, or both.*

(b) *CIVIL ACTION.*—Whoever knowingly engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505 (b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49 is liable in a civil action to any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

(c) *REIMBURSEMENT.*—

(1) *IN GENERAL.*—The court, in imposing a sentence on a defendant who has been convicted of an offense under subsection (a), shall order the defendant to reimburse any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

(2) *LIABILITY.*—A person ordered to make reimbursement under this subsection shall be jointly and severally liable for such expenses with each other person, if any, who is ordered to make reimbursement under this subsection for the same expenses.

(3) *CIVIL JUDGMENT.*—An order of reimbursement under this subsection shall, for the purposes of enforcement, be treated as a civil judgment.

(d) *ACTIVITIES OF LAW ENFORCEMENT.*—This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or political subdivision of a State, or of an intelligence agency of the United States.

* * * * *

CHAPTER 73—OBSTRUCTION OF JUSTICE

* * * * *

§ 1505. Obstruction of proceedings before departments, agencies, and committees

Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall [be fined under this title or imprisoned not more than five years, or both] *be fined under this title, imprisoned not more than 5 years or, if the matter relates to international or domestic terrorism (as defined in section 2331), imprisoned not more than 10 years, or both.*

* * * * *

CHAPTER 95—RACKETEERING

* * * * *

§ 1958. Use of interstate commerce facilities in the commission of murder-for-hire

(a) Whoever travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any [facility in] *facility of* interstate or foreign commerce, with intent that a murder be committed in violation of the laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, or who conspires to do so shall be fined under this title or imprisoned for not more than ten years, or both; and if personal injury results, shall be fined under this title or imprisoned for not more than twenty years, or both; and if death results, shall be punished by death or life imprisonment, or shall be fined not more than \$250,000, or both.

(b) As used in this section and section 1959—

(1) * * *

(2) “facility of interstate *or foreign* commerce” includes means of transportation and communication; and

* * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, MAY 12, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order. A quorum is present.

[Intervening business.]

Chairman SENSENBRENNER. The next item is H.R. 1678, the “Anti-Hoax Terrorism Act of 2003.”

The Chair recognizes the gentleman from North Carolina, Mr. Coble, the Chairman of the Subcommittee on Crime, Terrorism, and Homeland Security, for a motion.

Mr. COBLE. Mr. Chairman, the Subcommittee on Crime, Terrorism, and Homeland Security reports favorably the bill H.R. 1678, with a single amendment in the nature of a substitute, and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point, and the Subcommittee amendment in the nature of a substitute, which the Members have before them, will be considered as read, considered as the original text for purposes of amendment, and open for amendment at any point.

[The Subcommittee Amendment in the Nature of a Substitute follows:]

**SUBCOMMITTEE AMENDMENT IN THE NATURE OF
A SUBSTITUTE TO H.R. 1678**

**[Showing the text as ordered reported by the Subcommittee
on Crime, Terrorism, and Homeland Security on 30 MARCH
2004]**

Strike all after the enacting clause and insert the
following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Stop Terrorist and
3 Military Hoaxes Act of 2004”.

4 SEC. 2. HOAXES AND RECOVERY COSTS.

5 (a) PROHIBITION ON HOAXES.—Chapter 47 of title
6 18, United States Code, is amended by inserting after sec-
7 tion 1036 the following:

8 “§ 1037. False information and hoaxes

9 “(a) CRIMINAL VIOLATION.—

10 “(1) IN GENERAL.—Whoever knowingly en-
11 gages in any conduct with intent to convey false or
12 misleading information under circumstances where
13 such information may reasonably be believed and
14 where such information indicates that an activity
15 has taken, is taking, or will take place that would
16 constitute a violation of chapter 2, 10, 11B, 39, 40,
17 44, 111, or 113B of this title, section 236 of the

1 Atomic Energy Act of 1954 (42 U.S.C. 2284), or
2 section 46502, the second sentence of section 46504,
3 section 46505 (b)(3) or (c), section 46506 if homi-
4 cide or attempted homicide is involved, or section
5 60123(b) of title 49 shall—

6 “(A) be fined under this title or impris-
7 oned not more than 5 years, or both;

8 “(B) if serious bodily injury (as defined in
9 section 1365 of this title, including any conduct
10 that, if the conduct occurred in the special mar-
11 itime and territorial jurisdiction of the United
12 States, would violate section 2241 or 2242 of
13 this title) results, be fined under this title or
14 imprisoned not more than 25 years, or both;
15 and

16 “(C) if death results, be fined under this
17 title or imprisoned for any number of years up
18 to life, or both.

19 “(2) ARMED FORCES.—Whoever, without lawful
20 authority, makes a false statement, with intent to
21 convey false or misleading information, about the
22 death, injury, capture, or disappearance of a mem-
23 ber of the Armed Forces of the United States during
24 a war or armed conflict in which the United States
25 is engaged, shall—

1 “(A) be fined under this title or impris-
2 oned not more than 5 years, or both;

3 “(B) if serious bodily injury (as defined in
4 section 1365 of this title, including any conduct
5 that, if the conduct occurred in the special mar-
6 itime and territorial jurisdiction of the United
7 States, would violate section 2241 or 2242 of
8 this title) results, be fined under this title or
9 imprisoned not more than 25 years, or both;
10 and

11 “(C) if death results, be fined under this
12 title or imprisoned for any number of years up
13 to life, or both.

14 “(b) CIVIL ACTION.—Whoever knowingly engages in
15 any conduct with intent to convey false or misleading in-
16 formation under circumstances where such information
17 may reasonably be believed and where such information
18 indicates that an activity has taken, is taking, or will take
19 place that would constitute a violation of chapter 2, 10,
20 11B, 39, 40, 44, 111, or 113B of this title, section 236
21 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or
22 section 46502, the second sentence of section 46504, sec-
23 tion 46505 (b)(3) or (c), section 46506 if homicide or at-
24 tempted homicide is involved, or section 60123(b) of title
25 49 is liable in a civil action to any party incurring expenses

1 incident to any emergency or investigative response to that
2 conduct, for those expenses.

3 “(c) REIMBURSEMENT.—

4 “(1) IN GENERAL.—The court, in imposing a
5 sentence on a defendant who has been convicted of
6 an offense under subsection (a), shall order the de-
7 fendant to reimburse any party incurring expenses
8 incident to any emergency or investigative response
9 to that conduct, for those expenses.

10 “(2) LIABILITY.—A person ordered to make re-
11 imbursement under this subsection shall be jointly
12 and severally liable for such expenses with each
13 other person, if any, who is ordered to make reim-
14 bursement under this subsection for the same ex-
15 penses.

16 “(3) CIVIL JUDGMENT.—An order of reim-
17 bursement under this subsection shall, for the pur-
18 poses of enforcement, be treated as a civil judgment.

19 “(d) ACTIVITIES OF LAW ENFORCEMENT.—This sec-
20 tion does not prohibit any lawfully authorized investiga-
21 tive, protective, or intelligence activity of a law enforce-
22 ment agency of the United States, a State, or political sub-
23 division of a State, or of an intelligence agency of the
24 United States.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 as the beginning of chapter 47 of title 18, United States
3 Code, is amended by adding after the item for section
4 1036 the following:

“1037. False information and hoaxes.”.

5 **SEC. 3. OBSTRUCTION OF JUSTICE AND FALSE STATE-**
6 **MENTS IN TERRORISM CASES.**

7 (a) ENHANCED PENALTY.—Sections 1001(a) and
8 1505 of title 18, United States Code, are amended by
9 striking “be fined under this title or imprisoned not more
10 than 5 years, or both” and inserting “be fined under this
11 title, imprisoned not more than 5 years or, if the matter
12 relates to international or domestic terrorism (as defined
13 in section 2331), imprisoned not more than 10 years, or
14 both”.

15 (b) SENTENCING GUIDELINES.—Not later than 30
16 days of the enactment of this section, the United States
17 Sentencing Commission shall amend the Sentencing
18 Guidelines to provide for an increased offense level for an
19 offense under sections 1001(a) and 1505 of title 18,
20 United States Code, if the offense involves a matter relat-
21 ing to international or domestic terrorism, as defined in
22 section 2331 of such title.

23 **SEC. 4. CLARIFICATION OF DEFINITION.**

24 Section 1958 of title 18, United States Code, is
25 amended—

- 1 (1) in subsection (a), by striking “facility in”
2 and inserting “facility of”; and
3 (2) in subsection (b)(2), by inserting “or for-
4 eign” after “interstate”.

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Texas, Mr. Smith, the author of the bill, to strike the last word.

Mr. SMITH. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. Mr. Chairman, I urge our support of H.R. 1678, the "Anti-Hoax Terrorism Act of 2003." In the 107th Congress, I introduced H.R. 3209, which passed the House by a vote of 423 to 0, but no action was taken in the Senate. I, along with our colleague, Mr. Schiff, and others, reintroduced the bill as H.R. 1678 last year. This legislation is needed because some have used the shadow of fear cast by the 2001 terrorist attacks to further terrorize others with hoaxes of biological and chemical attacks.

Since that time, the hoaxes have increased. Now, for reasons I can't fathom, some have also terrorized the families of our military men and women with hoaxes, claiming that their loved ones have been killed in action. The purpose of H.R. 1678 is to address this serious problem. At a hearing last year, the Department of Justice and the FBI described how these hoaxes threatened the health and safety of the American public and the national security of our Nation.

In 2003, after the country went to war with Iraq, military families became the target of hoaxes to convince them that their loved ones had been killed in action. Last July, the Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on the bill and the problems hoaxes have created for law enforcement, the public and the families of U.S. soldiers serving overseas.

In one instance, a witness—the uncle of a U.S. soldier—testified that an individual who claimed to be a U.S. official called him and stated that his nephew had been killed in Iraq. Neither terrorist hoaxes nor the wartime hoaxes are adequately covered by current Federal law. So I hope my colleagues will support this bill.

And, Mr. Chairman, I'll yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman, and thank you for scheduling H.R. 1678 for markup today. False alarms are a problem at any time. They can cause senseless waste—they can be a senseless waste not only in scaring the public, but also endanger life and property, both by the impact on others and by causing emergency resources to be tied up should a genuine emergency arise somewhere else.

Mr. Chairman, during the anthrax crisis in 2001, one modest-size jurisdiction in my district estimated that it had spent over \$70,000 tracking down anthrax scares, all of which, fortunately, proved to be false alarms. When these false alarms are deliberate, whether they are misguided pranks or some deliberate, reckless hoax aimed at wreaking havoc, these societal and direct costs soar, and those perpetrating them should be held accountable for their actions.

Of course, accountability should be conform to established notions of proportionality. There is a difference between being misguided and being intentionally reckless or deliberately indifferent,

and any effort to hold a person liable for their consequences should recognize the difference. We worked out most of our concern in this regard in the 107th Congress with a bill which passed by a unanimous vote. H.R. 1678 started out with identical text to that bill. No similar bill passed the Senate, so the policies under 3209 did not become law.

Mr. Chairman, one remaining concern I have is that there be a distinction between those who commit a crime as a misguided, though costly, prank and those who intend to cause the havoc and waste, an intent or are indifferent to the injury or even death that can result.

We don't arrive at an amendment which can accomplish this distinction. Perhaps one way we can do it is through a report language which conveys the intent to the Sentencing Commission that there be a distinction for the purposes of sentencing guidelines.

Another concern I have is the fact that we mandate restitution, which could mean that a young, misguided offender is saddled with a lifetime of expenses to pay for a youthful mistake. However, in trying to work this out with the Subcommittee staff on ways to address this, we are not able to come up with a satisfactory resolution beyond the fact that we treat the restitution as a civil order for the purposes of enforcement.

So, Mr. Chairman, I support the bill, with these reservations, and will continue to work with my colleagues for ways to address them as the bill moves forward.

Thank you, Mr. Chairman, and I yield to the gentleman from California.

Mr. SCHIFF. I thank the gentleman for yielding, and I want to thank the gentleman for bringing up this bill and the good work of Mr. Smith from Texas.

Our communities continue to struggle each day to meet the demands of our citizens and prepare for all kinds of potential terrorist attacks. They are working vigorously to strengthen and improve protocols to respond swiftly and safely in the event of an attack, but our communities are doing this with very limited resources. Each time a threat is identified, authorities spring into action, donning protective gear, bolstering hospital staffing, coordinating local, State and Federal efforts and calling upon additional law enforcement personnel to respond.

These reports from our citizens are critical. We certainly want to encourage people to continue to be vigilant and report suspicious activity. A false alarm, however, is a false alarm. Every time a suspected threat turns out to be a hoax, it costs the taxpayers an enormous amount.

In the State of California, where I come from, we haven't been immune to this problem. In Los Angeles a man phoned in an anthrax threat because he wanted to avoid appearing in bankruptcy court that day. His hoax succeeded in shutting down the court, and the courthouse, and cost taxpayers \$600,000.

In my own district, an e-mail hoax last year about a SARS outbreak in a very strongly Asian-populated City of San Gabriel plagued the city, swamping the San Gabriel Police Department with about 50 calls a day inquiring into these rumors. Our police and firefighters should be out protecting our community, not responding to these hoaxes.

While millions of dollars are going into the effort to combat terrorism, we still do not have a dollar to waste and cannot allow these hoaxes to clog up the investigation of potentially life-threatening dangers. That's why I joined Mr. Smith in introducing the Anti-Hoax Terrorism Act of 2003. It is legislation that should not be necessary, but regrettably is certainly needed now. Those who would prey on the fears of the American public should be punished and deterred. And equally disturbing are these reports of hoaxes targeting military families of U.S. soldiers fighting in Iraq and elsewhere, and I'm pleased the necessary changes were made in order to include those heinous hoaxes within the bill.

Again, thank you, Mr. Chairman, and I thank Mr. Smith and our colleagues for their support of this measure.

I yield back.

Mr. SCOTT. I yield back.

Chairman SENSENBRENNER. The time of the gentleman has expired. Without objection, all Members' opening statements will appear in the record at this point.

[The prepared statement of Ms. Jackson Lee follows:]

SHEILA JACKSON LEE
18th District, Texas

COMMITTEES
SELECT COMMITTEE ON
HOMELAND SECURITY
SUBCOMMITTEES
INFRASTRUCTURE AND DOMESTIC SECURITY
OVERSIGHT, SCIENCE, AND
RESEARCH & DEVELOPMENT

JUDICIARY
SUBCOMMITTEES:
CRIME
TAKING NAMES
IMMIGRATION AND CLAIMS

SCIENCE
SUBCOMMITTEE
SPACE AND AERONAUTICS

MAJOR
DEMOCRATIC CAUCUS POLICY AND
STEERING COMMITTEE

TOP VICE CHAIR
CONGRESSIONAL BLACK CAUCUS

Congress of the United States
House of Representatives
Washington, DC 20515

WASHINGTON OFFICE:
2435 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3816

DISTRICT OFFICE:
1919 SW 11th STREET, SUITE 1180
THE GEORGE W. BROWN LEF AND FISHER BLDG.
HOUSTON, TX 77002
(713) 655-0050

ACRFF HOME OFFICE:
6719 WEST MONTGOMERY, SUITE 204
HOUSTON, TX 77019
(713) 691-4882

LEGISLATIVE OFFICE:
420 WEST 11th STREET
HOUSTON, TX 77008
(713) 691-4610

CONGRESSWOMAN SHEILA JACKSON LEE

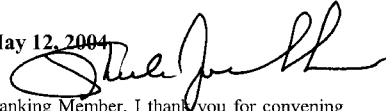
JUDICIARY COMMITTEE

MARKUP HEARING

H.R. 1678

“The Anti-Hoax Terrorism Act of 2003”

May 12, 2004



Mr. Chairman and Mr. Ranking Member, I thank you for convening
this markup of “The Anti-Hoax Terrorism Act of 2003.

As a Member of the Subcommittee that has the jurisdiction of the
Judiciary Committee related to homeland security issues and as a Member of

the Select Committee on Homeland Security, I am particularly interested in preventing terrorism hoaxes and holding criminal transgressors accountable.

H.R. 1768 imposes criminal and civil penalties on persons who intentionally engage in terrorism hoaxes regarding biological weapons, chemical weapons, nuclear material, and weapons of mass destruction in a way that is believable to the public.

The criminal penalties require a fine or imprisonment up to five years, or both. The civil penalties include damages payable to “any party incurring expenses incident to any emergency or investigative response to [the hoax].” The court hearing a case under this bill is required to order the defendant to reimburse any party incurring expenses incident to any emergency or investigation as a result of the hoax.

On its face, H.R. 1678 appears to be a good bill. Terrorism hoaxes are intolerable and there must be severe penalties on those who perpetrate these frauds. Homeland security funds and resources are both scarce and precious. During my work on the Select Committee on Homeland Security, I have spoken with numerous fire departments, police departments, hazardous

materials teams, and other first responders across the country who are not receiving the funding, equipment, and other resources they need to adequately protect their communities. Although the hoax itself may not pose a physical threat to public safety, those thoughtless individuals who perpetrate hoaxes are jeopardizing the safety of the public by depleting limited homeland security and law enforcement resources.

A paradigm example of an H.R. 1678-type transgression are the Anthrax hoaxes that gripped the United States after the anthrax attacks in September of 2001. The hoaxes caused far more chaos and expense than any of the genuinely poisoned letters, plus the hoaxes occurred nationwide. In Portland, Maine, a woman sent white powder to the town's post office, causing it to close. In Los Angeles a carpenter at the Queen Mary ship, now a tourist attraction, painted the words 'Danger. Do not open. Anthrax' on a waste bucket. In Indianapolis four students wrote 'This is anthrax' on a food container. In fact, it contained a cheeseburger and fries. In Avondale, Mississippi, a 20-year-old man was arrested after spreading sugar in mail bins at a shipyard firm. A FedEx deliveryman in Louisiana has been charged after putting a white powder in a parcel delivered to a woman client. He also drew a devil and wrote the letters 'USA' and 'Satan' on the parcel. In Pearl

City, Hawaii, a high school student was arrested after he brought white powder into school in an envelope. The building had to be evacuated. These incidences caused our first responders and the governmental entities to unnecessarily expend much needed energy and resources as well as raised the national threat level at a time when we realized our vulnerabilities the most. The fact that we are still vulnerable at our ports of entry and in first responder resources and facilities makes the passage of H.R. 1678 timely and sound.

These internal malfunctions only occupy our time and forestall our efforts to attack the legitimate threats that lie before us. As reported today from The Pentagon, more than 1,000 U.S. troops have been wounded in Iraq since our March 20 airstrike that initiated the war. According to the Defense Department, 791 of our troops were wounded in combat and 253 were injured in actions unrelated to combat operations, including traffic accidents. Since President Bush announced an end to the major fighting on May 1, 2003, at least 79 U.S. troops have nevertheless been killed in Iraq. Of those, 32 were killed by hostile fire, and 47 troops died of unintentional shootings and other accidents. As for the cost of the Iraqi war and occupation, Defense Secretary Donald Rumsfeld told a Senate committee Wednesday that the Pentagon projects an average of nearly \$4 billion a month. This

price tag surely does not account for in-house troubleshooting of terrorist hoaxes.

The cost of responding to terrorist hoaxes misplaces our resources and displaces our first responder staffs. This timely and important bill will potentially diminish this effect so that we can channel our effort to answering the emergent calls of our first responders and finding a real source of security in our homeland for our children and grandchildren.

I express many thanks to the Chairman and Mr. McCotter for their efforts to include language that I suggested during our legislative hearing as to hoaxes that relate to the death, capture, or disappearance of a member of the Armed Forces of the U.S.. Especially at a time when the death toll is steadily rising, we need legislative provisions to ensure that respect is paid for our brave men and women. Section 1037, paragraph 2 references hoaxes of this nature.

However, this bill still contains a “gap” in terms of its application to hoaxers. The First Amendment free speech guarantees beg the question of how Section 1037 proposes to distinguish between the innocent jokester and

the perpetrator of a terrorism hate crime. This is a very important distinction when it comes to the application of criminal penalties.

I would offer an amendment that will help this legislation capture the perpetrators whom it was drafted to capture – the person who seeks to hurt others. The amendment would not alter the thrust of the legislation, rather, it would clarify it and make it a more narrowly-tailored prohibition and deterrent to truly malicious defendants.

In Section 1037, paragraph (a)(1), I suggest that the language “Whoever knowingly engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation ...” be amended to read “Whoever knowingly engages in any conduct with intent to convey false or misleading information and to harm or cause bodily damage under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation ...” This change will add the necessary intent to harm another individual that is missing from the current language of the provision. As drafted, the legislation broadly prohibits hoaxes *and* harmless jokes that are not of consequence. Although

the government interest of deterring terrorist hoaxes is very high, we still have a duty to maintain and uphold the fundamental right to free speech. Legislation should be as narrowly-tailored to achieve its purpose as possible in order to deter and punish the desired perpetrators in the most efficient manner. Adding the suggested language as mentioned above will help to accomplish this goal.

I ask that my colleagues on both sides of the aisle support this amendment as it will not materially change the thrust of this legislation, rather it will enhance its application and reduce the number of wrongful convictions.

Mr. Chairman and Mr. Ranking Member, for these reasons, I offer my support of H.R. 1678, the Anti-Hoax Terrorism Act of 2003 with the language that I offer as an amendment. Thank you.

Chairman SENSENBRENNER. Are there amendments?

[No response.]

Chairman SENSENBRENNER. If there are no amendments, the Chair notes the presence of a reporting quorum.

The gentlewoman from Texas?

[No response.]

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1678, offered by Ms. Jackson Lee of Texas. On the first page, line 12, insert “and to harm or cause bodily damage” after “misleading information”.

[The amendment of Ms. Jackson Lee follows:]

**AMENDMENT TO THE SUBCOMMITTEE AMEND-
MENT IN THE NATURE OF A SUBSTITUTE TO
H.R. 1678
OFFERED BY MS. JACKSON-LEE OF TEXAS**

On the first page, line 12, insert “and to harm or
cause bodily damage” after “misleading information”.

Chairman SENSENBRENNER. The gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

First of all, I'd like to express my thanks to you and to Mr. Mercado for your efforts in including language that I suggested during our legislative hearing as to hoaxes that relate to the death, capture or disappearance of a member of the Armed Forces of the United States. We know with our brave men and women on the front lines that this is crucial to not only their survival, but as well our support for their efforts in the war on terrorism and elsewhere.

The Anti-Hoax Terrorism Act of 2003 is an important legislative initiative. But for the very reason that it is important, I would offer this amendment that simply tries to enhance the actual act that is to be caused and so that the charge is not based on an inchoate or a nonachievable challenge or act, but it is on something that is tangible and that is clearly defensible, if you will, or definable under the law.

It is amended to read, “Whoever knowingly engages in any conduct with intent to convey false or misleading information and to harm or cause bodily damage under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taken or will take place that would constitute a violation.”

The change will add the necessary intent to harm another individual that is missing from the current language of the provision. As drafted, the legislation broadly prohibits hoaxes and harmless jokes that are not of consequence, although, of course, we would certainly argue against or discourage those kinds of activities. Although the Government interest of deterring terrorist hoaxes is very high, we still have a duty to maintain and uphold the fundamental right to free speech. Legislation should be as narrowly tailored to achieve its purpose as possible in order to deter and punish the desired perpetrators in the most efficient manner and to achieve the goal of this Committee and the legislation. Adding the suggested language, as mentioned above, will help to accomplish this goal.

I would ask that my colleagues on both sides of the aisle support this amendment, as it will not materially change the thrust of this legislation; rather, it will enhance this legislation, reduce the number of wrongful convictions. Again, it is to lift the threshold to make sure that we do our job in the way we'd like to do it and to ensure that we truly go after those who are engaged in anti-hoax terrorism with the intent that may ultimately result in bodily harm. I would ask my colleagues to support the legislation.

[The prepared statement of Ms. Jackson Lee follows:]

SHEILA JACKSON LEE
18TH DISTRICT, TEXAS

COMMITTEES:
**SELECT COMMITTEE ON
HOMELAND SECURITY**
SUBCOMMITTEES:
DOMESTIC SECURITY AND BORDER SECURITY
CYBERSECURITY, SOFNET, AND
RESEARCH & DEVELOPMENT

JUDICIARY
SUBCOMMITTEES:
CRIME
RANKING MEMBER
IMMIGRATION AND CLAIMS

SCIENCE
SUBCOMMITTEE:
SPACE AND AERONAUTICS

AD-CAUCUS
**DEMOCRATIC CAUCUS POLICY AND
STEERING COMMITTEE**

151 WICK CIRCLE
CONGRESSIONAL BLACK CAUCUS

Congress of the United States
House of Representatives
Washington, DC 20515

WASHINGTON OFFICE:
2455 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3819

DISTRICT OFFICE:
1919 SAN JIM STREET, SUITE 1100
THE GEORGE "BOBBY" LEE AND FEDERAL BUILDING
HOUSTON, TX 77002
(713) 655-4050

ACRES HOME OFFICE:
6719 WEST MONTGOMERY, SUITE 204
HOUSTON, TX 77019
(713) 691-4882

HEIGHTS OFFICE:
420 WEST 19TH STREET
HOUSTON, TX 77008
(713) 861-4070

CONGRESSWOMAN SHEILA JACKSON LEE

JUDICIARY COMMITTEE

Amendment ~~RECEIVED~~

H.R. 1678

"The Anti-Hoax Terrorism Act of 2003"

May 12, 2004



- I express many thanks to Chairman Sensenbrenner and Mr. McCotter for their efforts to include language that I suggested during our legislative hearing as to hoaxes that relate to the death, capture, or disappearance of a member of the Armed Forces of the U.S..
- Especially at a time when the death toll is steadily rising, we need legislative provisions to ensure that respect is paid for our brave men

and women. Section 1037, paragraph 2 references hoaxes of this nature.

- However, this bill still contains a “gap” in terms of its application to hoaxers. The First Amendment free speech guarantees beg the question of how Section 1037 proposes to distinguish between the innocent jokester and the perpetrator of a terrorism hate crime.
- This is a very important distinction when it comes to the application of criminal penalties.
- I would offer an amendment that will help this legislation capture the perpetrators whom it was drafted to capture – the person who seeks to hurt others. The amendment would not alter the thrust of the legislation, rather, it would clarify it and make it a more narrowly-tailored prohibition and deterrent to truly malicious defendants.
- **In Section 1037, paragraph (a)(1), I suggest that the language**

“Whoever knowingly engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation ...”

be amended to read

“Whoever knowingly engages in any conduct with intent to convey false or misleading information **and to harm or cause bodily damage** under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation ...”

This change will **add the necessary intent to harm another individual that is missing from the current language of the provision.**

- As drafted, the legislation broadly prohibits hoaxes *and* harmless jokes that are not of consequence. Although the government interest of deterring terrorist hoaxes is very high, we still have a duty to maintain and uphold the fundamental right to free speech.
- Legislation should be as narrowly-tailored to achieve its purpose as possible in order to deter and punish the desired perpetrators in the most efficient manner. Adding the suggested language as mentioned above will help to accomplish this goal.
- I ask that my colleagues on both sides of the aisle support this amendment as it will not materially change the thrust of this legislation, rather it will enhance its application and reduce the number of wrongful convictions.

Chairman SENSENBRENNER. Before recognizing the gentleman from Texas to oppose the amendment, the Chair recognizes the gentleman from Michigan to make an introduction.

Mr. CONYERS. Thank you, Mr. Chairman.

I take this opportunity to welcome 30 of our students from three different high schools in Detroit. We are glad that you have all visited the Judiciary Committee in the House. We have done very important work across the years. We deal with the Constitution and the amendments thereto. I just happened to think we handle impeachments, also, and the Immigration and Naturalization Service. And these, Chairman Sensenbrenner, students are from Cass Technical High School, Mumford High School, and Western International High School. They are accompanied by their teachers, Virginia Coleman, Dania Herring, Carl Arrington, Kathleen Frasier. Would you all stand up for just 1 second and then sit down again.

We are happy to see you here. [Applause.]

I thank you for the intervention, Chairman Sensenbrenner.

Chairman SENSENBRENNER. The Chair would like to join with Mr. Conyers in welcoming the students here. Mr. Conyers did ask you to sit down again for fear that we thought that you might walk out on us if you didn't do that. [Laughter.]

The gentleman from Texas, Mr. Smith?

Mr. SMITH. Mr. Chairman, I oppose Ms. Jackson Lee's amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. Mr. Chairman, adding the phrase "to cause harm or bodily injury" could render the legislation useless. How would we define harm? By its very nature, a hoax is not necessarily intended to cause harm or injure a person. If the person had the intent to harm, they would use real biological weapons, such as anthrax, instead of powdered sugar. By using powdered sugar, instead of anthrax, the person engaging in the hoax can argue it was a joke and that they did not intend to harm anyone.

The issue is not whether the criminal intended to physically harm the victims of the hoax, but whether the victims reasonably believed they were harmed. For instance, one witness, the uncle of the U.S. soldier I mentioned a while ago, testified that an individual calling him claimed to be a U.S. official and informed him that his nephew had been killed in Iraq. The person carrying out the hoax could claim it was just a crank call and not done maliciously or to harm anyone. The problem is that there may have been no intent to harm someone, but the victim believed he was harmed by the loss of his nephew.

Mr. Chairman, if Members adopt this amendment, they are showing their intent to cause harm or bodily injury to this underlying legislation. So I oppose the amendment.

And before I yield back the balance of my time, Mr. Chairman, I would like unanimous consent to have a letter from the Department of Justice supporting this bill made a part of the record.

Chairman SENSENBRENNER. Without objection.

[The Department of Justice letter follows:]



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 4, 2004

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

We are writing to express our strong support for H.R. 1678, the "Stop Terrorist and Military Hoaxes Act of 2004," as forwarded by the Subcommittee on Crime, Terrorism and Homeland Security to the full Committee. This legislation would address the problem of terrorism hoaxes by subjecting to criminal and civil penalties those intentionally conveying false information regarding the use or threatened use of biological, chemical, and nuclear weapons, and the commission of other terrorism-related crimes. It also addresses the problem of those who convey false information about the death or injury of our military personnel during wartime.

Terrorism hoaxes can cause severe disruptions and needlessly divert law-enforcement and emergency-services resources. In the wake of the anthrax attacks in the fall of 2001, for example, a number of individuals perpetrated terrorism-related hoaxes by mailing unidentified white powder intending for the recipient to believe it was anthrax. In one such case, an individual in 2002 sent over 200 threatening letters, laced with white powder, to various government agencies, business, and people in Louisiana. For days, these letters paralyzed the town of Lafayette, Louisiana, as law enforcement agencies with a limited number of Haz-Mat units sought to respond to numerous requests for assistance. The letters shut down the local post office for a day, as well as all local courthouses, many government officers, and numerous local businesses. Such hoaxes not only waste the time and money of law enforcement agencies, they also impede their ability to respond to actual terrorist attacks and other criminal acts.

The Honorable F. James Sensenbrenner, Jr.
Page Two

Unfortunately, however, current Federal law does not adequately address the problem of terrorism hoaxes. At present, the primary way to prosecute terrorism hoaxes is to use "threat" statutes such as 18 U.S.C. § 2332a, which criminalizes certain threats to use weapons of mass destruction, and 18 U.S.C. § 876, which criminalizes using the mails to threaten injury to a person. Aside from their jurisdictional limitations, these statutes are insufficient to combat the problem of terrorism hoaxes because they do not address hoaxes that cannot be demonstrated to be threats. For example, calling law enforcement and falsely reporting the receipt of an envelope filled with anthrax would constitute a hoax but not necessarily a threat.

H.R. 1678 would amend Federal law to create a new prohibition on terrorism hoaxes. Specifically, it would create penalties for engaging in conduct with the intent to convey false or misleading information, under circumstances where the information may reasonably be believed and concerns an activity that would constitute a violation under a number of provisions of Federal criminal law. The punishment imposed for committing a hoax varies according to the nature of the hoax perpetrated. In all cases, the defendant may be ordered by a court to reimburse any party that incurred expenses related to an emergency or investigative response to the false report. Additionally, the defendant would be liable in a civil action to any party incurring such expenses.

It is hard to believe that anyone would falsely report the death or injury of a soldier fighting for his country. But the press has reported several instances of people receiving hoax phone calls reporting the death of a loved one serving in Iraq or Afghanistan. H.R. 1678 punishes those who make false statements about the death, injury, or capture of a member of our military during a war or armed conflict in which the U.S. is engaged. Those who make such false statements face the same tough sentencing structure as described immediately above regarding hoaxes.

We have two points of concern, however, regarding the bill's criminal violation in proposed 18 U.S.C. § 1037. Subsection (a)(1)'s scienter requirement that one must engage in conduct "knowingly" with the "intent" to convey false or misleading information creates an unnecessary "double intent" element that is potentially confusing. We recommend that the word "knowingly" be deleted. In addition, subsections (a)(1)(B) and (a)(2)(B) permit imposition of a higher sentence if "serious bodily injury" resulted from the hoax. "Serious bodily injury" is defined by the definition of that term found in 18 U.S.C. § 1365(h)(3) and by reference to sex abuse crimes found at 18 U.S.C. §§ 2241-2242. While we recognize that serious bodily injury can result from aggravated sex offenses, we are uncertain why these crimes are germane in the context of hoaxes.

The Honorable F. James Sensenbrenner, Jr.
Page Three

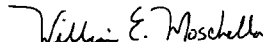
On the issue of reimbursement, the Administration supports the approach taken in the bill by creating subsection (c) of what would become 18 U.S.C. § 1037. In our view, this approach of including a reimbursement provision in a statute addressing terrorism hoaxes is preferable to amending the Federal restitution statutes (18 U.S.C. § 3663; 18 U.S.C. § 3663A), because those statutes address reimbursement for expenses incurred in connection with injury to a particular victim, as opposed to reimbursement for expenses related to emergency and investigative services, which often involve payments to state and local governments.

The bill's reimbursement provision, however, would be improved by an amendment requiring convicted defendants to pay a minimum of \$1,000 to any State or local agency or private non-profit organization that provided fire or rescue services responding to a false threat or hoax even if the organization's actual response cost was less than this amount. We would propose that the following language be inserted at the end of paragraph (c)(1): "For the purposes of this provision, a State or local government, or private not-for-profit organization that provides fire or rescue services that is dispatched and responds to such an emergency shall be entitled to the greater of actual costs of response or \$1,000."

We also recommend modifying section (c)(1) by changing "any party" to "any State or local government, or private not-for-profit organization that provides fire or rescue services". We think that this modification would enhance the legislation by limiting court-ordered reimbursement to government or quasi-government entities. Parties falling outside of these two classes would recover expenses they have incurred from a hoax by bringing a civil action under §1037(b).

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report. If we may be of further assistance in our support of H.R. 1678, please do not hesitate to contact this office.

Sincerely,


William E. Moschella
Assistant Attorney General

cc: The Honorable John Conyers, Jr.
Ranking Minority Member

Chairman SENSENBRENNER. The question is on the amendment offered by the gentlewoman from Texas, Ms. Jackson Lee.

Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments?

[No response.]

Chairman SENSENBRENNER. If there are no further amendments, without objection, the Subcommittee amendment in the nature of a substitute laid down as the base tax as amended is adopted. A reporting quorum is present.

The question occurs on the motion to report the bill H.R. 1678 favorably as amended.

All in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it. The motion to report favorably is adopted.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendments adopted here today. Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes. All Members will be given 2 days, as provided by House rules, in which to submit additional dissenting, supplemental or minority views.